UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.19/2002/2/Add.1
8 April 2002

Original: ENGLISH

Permanent Forum on Indigenous Issues
First session
New York, 13-24 May 2002
Item 6 of the provisional agenda

REVIEW OF ACTIVITIES OF THE UNITED NATIONS SYSTEM RELATING TO INDIGENOUS PEOPLES: AN INTERACTIVE DISCUSSION

Information received from the United Nations system

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Introduction

1. The World Intellectual Property Organization (WIPO) is one of the specialized agencies of the United Nations system of organizations. WIPO's mandate is the promotion of the protection of intellectual property (IP) throughout the world through cooperation among States, where appropriate in collaboration with any other international organization. The notion of "intellectual property" is defined in article 2 (viii) of the Convention establishing the World Intellectual Property Organization, 1967, to include rights relating to:

Literary, artistic and scientific works;

Performances of performing artists, sound recordings and broadcasts;

Inventions in all fields of human endeavour;

Scientific discoveries;

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Industrial design;

Trademarks, service marks, and commercial names and designations;

Protection against unfair competition;

All other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

2. WIPO currently has 178 member States. The WIPO Program of Activities and Budget are determined for two-year periods by the organization's member States. WIPO's headquarters are in Geneva, Switzerland.

WIPO and traditional knowledge: 1998-2001

3. Although WIPO has been active in the field of so-called "expressions of folklore" since the 1960s, in 1998 WIPO commenced a new set of activities designed to explore the intellectual property aspects of the protection of traditional knowledge. The main objective of these activities was "to identify and explore the intellectual property needs and expectations of new beneficiaries, including the holders of indigenous knowledge and innovations, in order to promote the contribution of the intellectual property system to their social, cultural and economic development" (Main Program 11, WIPO Program and Budget 1998-1999).

4. To this end a range of exploratory activities was carried out by WIPO in 1998 and 1999, including:

Between June 1998 and November 1999, WIPO conducted nine fact-finding missions (FFMs) to 28 countries in the South Pacific, southern and eastern Africa, South Asia, North America, Central America, West Africa, the Arab countries, South America and the Caribbean. On the FFMs, WIPO representatives spoke directly with the holders of traditional knowledge (TK), such as traditional healers, farmers and artisans, in order to learn first-hand about their needs and expectations for traditional knowledge protection. In July 2000, WIPO produced a draft report on all the FFMs and made it available for public comment. Comments received were taken into account in producing the revised report, which was published in April 2001. The draft and revised reports are available from the WIPO web site at www.wipo.int/globalissues.

In cooperation with the United Nations Educational, Social and Cultural Organization (UNESCO), WIPO organized four regional consultations on the protection of "expressions of folklore". The Recommendations, Resolutions and other documents from these Consultations are available on the WIPO web site at www.wipo.int/globalissues.

In July 1998 and November 1999, WIPO organized two round tables to facilitate an exchange of views among policy makers, indigenous peoples and other holders of TK on the role of intellectual property in the protection of traditional and indigenous knowledge.

WIPO also undertook, in cooperation with the United Nations Environment Programme (UNEP), an on-site documentation project on the role of intellectual property rights in the sharing of benefits arising from the use of biological resources and associated traditional knowledge.

5. As is apparent from the above, the WIPO work programme does not address indigenous peoples specifically or exclusively. The programme addresses the rights and interests of all holders and custodians of tradition-based creations and innovations (referred to as "traditional knowledge holders" or "TK holders"), including of course indigenous peoples.

6. In 2000-2001 the work moved beyond issues-identification into a phase of addressing conceptual problems and testing practical solutions for the protection of TK. The WIPO Program and Budget for the 2000-2001 biennium included, for example, the following activities: the development of practical training and information materials, including an online distance learning course on the IP system and the protection of TK; practical training workshops for TK holders and others on the IP system and how the IP system relates to the protection of TK; IP information, training and standards for the documentation of TK; and practical studies of actual cases in which TK protection has been sought under the IP system, and the publication of the lessons learned.

The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

7. At the twenty-sixth session of the General Assembly of the member States of WIPO, held in Geneva from 25 September to 3 October 2000, the member States established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore for the purpose of discussions on these subjects. The Intergovernmental Committee constitutes a forum in which discussions can proceed among member States on three primary themes, namely intellectual property issues that arise in the context of (i) access to genetic resources and benefit sharing; (ii) protection of traditional knowledge, whether or not associated with those resources; and (iii) the protection of expressions of folklore.

8. The working documents of the Intergovernmental Committee can be obtained from the Secretariat and are also available on the WIPO web site at www.wipo.int/globalissues.

First session of the Intergovernmental Committee

9. The Intergovernmental Committee held its first session from 30 April to 3 May 2001. At the first session of the Intergovernmental Committee, WIPO member States expressed support for a work programme intended to advance discussion on the three themes, as follows:

Genetic resources

To consider the development of "guide contractual practices", guidelines, and model intellectual property clauses for contractual agreements on access to genetic resources and benefit-sharing, taking into account the specific nature and needs of different stakeholders, different genetic resources, and different transfers within different sectors of genetic resource policy. (Task A.1)

Traditional knowledge

Delineating the scope of subject matter in respect of which the member States wish to discuss the application of intellectual property protection, for the purpose of having a definition of the term "traditional knowledge". (Task B.1)

To compile, compare and assess information on the availability and scope of intellectual property protection for traditional knowledge within the scope of subject matter which was delimited under Task B.1 and to identify any elements of the agreed subject matter which require additional protection. (Task B.2)

To consider the revision of existing criteria and developing new criteria which would allow the effective integration of traditional knowledge documentation into searchable prior art. (Task B.3)

To consider ways of assisting traditional knowledge holders in relation to the enforcement of intellectual property rights, in particular by assisting them to strengthen their capacity to enforce their rights. (Task B.4)

Expressions of folklore

To undertake a collection and analysis of national experiences with regard to the protection of folklore. (Task C.1)

Second session of the Intergovernmental Committee

10. The second session of the Intergovernmental Committee took place in Geneva from 10 to 14 December 2001. At the second session, the Committee discussed possible activities for the implementation of the tasks of the work programme adopted at the first session. The Committee Members expressed support for a set of activities, intended to implement the tasks, which comprises the following items.

Genetic resources

The Committee adopted a two-step approach for the development of guide contractual practices and model intellectual property clauses for contractual agreements on access to genetic resources and benefit-sharing. It decided that, first, a complete and systematic survey of IP clauses used in existing contracts should be undertaken and, second, guide practices and model IP clauses should be developed, based on the existing practices and

clauses. The Committee reached certain general conclusions concerning the guide practices and model clauses, including that they would be developed with the full and effective participation of all stakeholders, in particular indigenous and local communities.

Traditional knowledge

11. The Committee discussed in detail activities on traditional knowledge as prior art and expressed support for the following measures:

Compiling an inventory of traditional knowledge-related periodicals for their possible integration into the minimum documentation list under the Patent Cooperation Treaty (PCT);

Considering a possible recommendation that certain periodicals may be considered for integration into the Journal of Patent Associated Literature (JOPAL) project;

Taking into account traditional knowledge in future amendments of existing guidelines for search and examination of patent applications;

Studying the feasibility of electronic exchange of public domain traditional knowledge documentation data, including through databases and digital libraries;

Examining the applicability of existing intellectual property documentation standards to traditional knowledge-related subject matter and the relationship of these standards with existing traditional knowledge documentation standards;

Assisting traditional knowledge documentation initiatives to manage intellectual property implications of the documentation process.

12. Committee members also requested the Secretariat of WIPO to prepare for the next session of the Committee a document with elements for a possible sui generis system for the protection of traditional knowledge.

Expressions of folklore

13. The Committee considered a Preliminary Report on National Experiences with the Legal Protection of Expressions of Folklore and invited Committee Members which had not yet provided information on their national experiences to do so before 31 January 2002. It decided that thereafter a final report would be prepared and issued by the Secretariat, which would summarize and analyse the responses received, draw conclusions and suggest tasks and activities on expressions of folklore which the Intergovernmental Committee may wish to undertake.

Third session of the Intergovernmental Committee

14. The third session of the Intergovernmental Committee is expected to take place in Geneva from 13 to 21 June 2002.

Participation at sessions of the Intergovernmental Committee

15. The Intergovernmental Committee is open to all member States of WIPO. Relevant intergovernmental organizations and accredited international and regional non-governmental organizations are invited to participate as observers. Twenty-two non-governmental organizations were granted ad hoc observer status at the first and second sessions of the Intergovernmental Committee and 74 non-governmental organizations already have regular observer status at WIPO.

16. Decisions on accreditation are not made by the WIPO Secretariat, but by the member States at the beginning of the sessions of the Intergovernmental Committee. In order to enable Member States to make a decision on the accreditation of an organization, organizations requesting ad hoc observer status at the Intergovernmental Committee should provide WIPO with a brief description of the organization, including the organization's full name, main objectives, full address and contact details, and the name of the country or countries in which the organization is primarily active. It is requested that this description be no longer than five hundred words. A particular description of how the work of the organization relates to intellectual property protection would be very helpful. This description can be sent either by mail or by email to the WIPO Secretariat at the email address: <susanna.chung@wipo.int>. Requests for accreditation for consideration at the third session of the Committee (13-21 June 2002) should be received by the WIPO Secretariat before **24 May 2002**. Requests for accreditation for consideration at the fourth session (December 2002), should be received before the end of October 2002.

17. At its second session, the Committee, furthermore, recommended that the Program and Budget Committee of WIPO should consider the possible financing by WIPO of the participation of indigenous and local communities at the sessions of the Committee. This request will be considered by the Program and Budget Committee at its next meeting.